

Pleas of Admission or No Contest in Delinquency Proceedings

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10.1 Juvenile's Right to Have Judge Take Plea

MCR 5.912(A) states that the parties have a right to a judge at a hearing on the formal calendar. A plea of admission or no contest may occur on the formal calendar. MCR 5.903(A)(6).

NOTE: A plea of admission or no contest may also occur on the consent calendar or, under MCR 5.935(B)(6), during the preliminary hearing, before the petition has been authorized for filing. See Sections 6.4 (consent calendar) and 7.14 (procedures at preliminary hearings).

Whenever practicable, two or more matters within the Family Division's jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. MCL 600.1023(1); MSA 27A.1023(1).*

The disqualification of a juvenile court judge is governed by MCR 2.003. MCR 5.912(C).

*See Section 7.5
(requirements
for petitions).

10.2 Referees Who May Take Pleas

Unless a party has demanded a trial by judge or by jury, a referee may conduct all proceedings through the dispositional phase. MCR 5.913(B). Thus, a referee may accept a plea of admission or no contest. However, MCR 5.913(A)(2) states that except as otherwise provided in MCL 712A.10; MSA 27.3178(598.10), only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court for allegedly committing a criminal offense.

MCL 712A.10; MSA 27.3178(598.10), allows a probation officer or county agent who is not a licensed attorney to serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing if he or she was designated to serve as referee prior to January 1, 1988, and was acting as a referee on that date.

10.3 Right to Counsel

*See Form JC 07.

If the juvenile in a delinquency case is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings, including plea proceedings. MCL 712A.17c(1); MSA 27.3178(598.17c)(1), and MCR 5.915(A)(1). The appearance of defense counsel is governed by MCR 2.117(B). MCR 5.915(C).*

A. Appointment of Counsel

*See Form JC 03.

MCL 712A.17c(2)(a)–(e); MSA 27.3178(598.17c)(2)(a)–(e), and MCR 5.915(A)(2)(a)–(e) require the court to appoint an attorney* to represent the juvenile if any of the following applies:

- (a) the parent refuses or fails to appear and participate in the proceedings;
- (b) the parent is the complainant or victim;
- (c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney and the juvenile does not waive the right to an attorney;
- (d) those responsible for the support of the juvenile refuse or neglect to retain an attorney and the juvenile does not waive the right to an attorney; or
- (e) the court determines that the best interests of the juvenile or the public require appointment.

NOTE 1: This provision for appointment of counsel for a juvenile differs from the provision applicable to indigent adult criminal defendants. Indigent adult criminal defendants may have counsel appointed if the offense charged is punishable by over 92 days in jail, or if the offense charged requires a minimum jail sentence, or if the court determines that it may send the defendant to jail. MCR 6.610(D)(2)(a)–(c).

An attorney appointed by the court must serve until discharged by the court. MCL 712A.17c(9); MSA 27.3178(598.17c)(9), and MCR 5.915(E).

NOTE 2: In some cases, the court will continue the attorney's appointment past disposition — usually because the needs of the juvenile demand that an attorney familiar with the case follow the juvenile's progress while he or she remains under the court's jurisdiction.

B. Waiver of Right to Counsel

The juvenile may waive the right to the assistance of counsel except where a parent or guardian ad litem objects or where the court determines that the best interests of the juvenile or the public require appointment of counsel. The waiver must be made in open court to a judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made. MCL 712A.17c(3); MSA 27.3178(598.17c)(3), and MCR 5.915(A)(3).^{*} See, generally, *In re Gault*, 387 US 1, 42; 87 S Ct 1428; 18 L Ed 2d 527 (1967).

^{*}See Form JC 06.

C. Costs

If an attorney is appointed for a party in delinquency proceedings, the court may enter an order assessing attorney costs against the party or a person responsible for the support of that party. MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D). See also MCL 712A.18(5); MSA 27.3178(598.18)(5) (reimbursement as part of order of disposition).^{*}

^{*}See Sections 12.14 – 12.18 for a detailed discussion of reimbursement of costs.

An order assessing attorney costs may be enforced through contempt proceedings.^{*}

^{*}See Forms MC 230 and JC 38 and 39.

10.4 Appearance of Prosecuting Attorney

When a criminal offense is alleged, the prosecuting attorney must appear for the people when requested by the court, or if the proceeding requires a hearing and the taking of testimony. MCR 5.914(A) and 5.914(B)(2), and MCL 712A.17(4); MSA 27.3178(598.17)(4). Thus, the prosecuting attorney may be required to appear at a plea proceeding.

The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 5.903(B)(5).

10.5 Plea Procedures

A. Available Pleas

*See also Sections 17.9 and 17.10 (pleas of not guilty by reason of insanity and guilty but mentally ill in criminal cases).

A juvenile may offer a plea of admission or no contest with the consent of the court,* and the court may not accept the plea unless it is satisfied that the plea is accurate, voluntary, and understanding. MCR 5.941(A).

B. Understanding, Voluntary, and Accurate Plea

Before accepting a plea of admission or no contest, the court must personally address the juvenile and must comply with the following rules. MCR 5.941(C) and *People v Tallieu*, 132 Mich App 402, 404 (1984).

F An Understanding Plea

To establish that the plea is understanding, the court must tell the juvenile:

- (a) the name of the offense charged;
- (b) the possible dispositions; and
- (c) that if the plea is accepted, the juvenile will not have a trial of any kind, so the juvenile gives up the rights that would have been present at trial, including the right:
 - (i) to trial by jury;
 - (ii) to trial by the judge if the juvenile does not want a trial by jury;
 - (iii) to be presumed innocent until proven guilty;
 - (iv) to have the petitioner or prosecutor prove guilt beyond a reasonable doubt;
 - (v) to have the witnesses against the juvenile appear at trial;
 - (vi) to question the witnesses against the juvenile;
 - (vii) to have the court order any witnesses for the juvenile's defense to appear at the trial;
 - (viii) to remain silent and not have the juvenile's silence used against the juvenile; and
 - (ix) to testify at trial, if the juvenile wants to testify.

MCR 5.941(C)(1)(a)–(c).

To establish a sufficient factual basis in the record for a determination that a plea is understandingly made, it may be necessary to ask questions of the juvenile. For example, the court may want to inquire about the juvenile's age, extent of education, and grades in school. If the juvenile is represented by counsel, the court may want to ask whether he or she has had an adequate opportunity to discuss the plea with the attorney. Also, the court may ask if the juvenile is under the influence of drugs, alcohol, or medication, which might affect his or her ability to understand the proceedings.

F A Voluntary Plea

To establish that the plea is voluntary, the court must:

- (a) confirm any plea agreement on the record, and
- (b) ask the juvenile if any promises have been made beyond those in a plea agreement or whether anyone has threatened the juvenile.

MCR 5.941(C)(2)(a)–(b).

F An Accurate Plea

To establish that the plea is accurate, the court must determine that there is support for a finding that the juvenile committed the offense. See *In re Bailey*, 137 Mich App 616, 623–24 (1984), citing *Guilty Plea Cases*, 395 Mich 96 (1975). The court may do this by:

- (a) questioning the juvenile or by other means if the plea is one of admission, or
- (b) using other means when the juvenile pleads no contest. The court must also state why a plea of no contest is appropriate.

MCR 5.941(C)(3)(a)–(b).

C. Parental Support for Plea

The court must also determine whether there is parental support for the plea. Under MCR 5.941(C)(4), the court must inquire of the parent or guardian ad litem whether the parent or guardian ad litem knows of any reason why the court should not accept the plea tendered by the juvenile. Agreement or objection by the parent or guardian ad litem to a plea of admission or no contest by the juvenile must be placed on the record if the parent or guardian ad litem is present.

10.6 Special Requirements for No Contest Pleas

Pleas of no contest must be supported by a sufficient factual basis. Because the court rule requires that means other than questioning the juvenile must be used, resort to a police report, transcripts, or other documents, or an offer of proof by the prosecutor seems justified. The court should get the agreement of defense counsel if something other than actual testimony is used.

In addition, the court must state why a no-contest plea is appropriate. There has been a long-standing preference for direct testimony of the defendant to establish a factual basis for a plea. However, a number of appropriate reasons to allow acceptance of no-contest pleas have been recognized in criminal cases, including:

- F reluctance of the defendant to relate details of a particularly sordid crime;
- F severe intoxication impairing the defendant's memory of details of the crime;
- F commission of so many crimes that the defendant couldn't remember which was which; and
- F minimizing civil liability.

See *Guilty Plea Cases*, 395 Mich 96, 134 (1975), *People v Sickmiller*, 87 Mich App 332, 334 (1978) (criminal sexual conduct), *People v Blazina*, 139 Mich App 40, 43 (1984) (amnesia), *People v Maciejewski*, 68 Mich App 1 (1976) (reluctance of defendant to relate details), *People v Hill*, 86 Mich App 706, 713 (1978) (both the interests of defendant and "proper administration of justice" must be evaluated), and *People v Byrd*, 150 Mich App 624, 626–27 (1986) (civil liability). For examples of inappropriate reasons to accept nolo contendere plea, see *People v Spann*, 60 Mich App 48, 55 (1975) (hindrance of ongoing criminal investigations), and *People v Gonzales*, 70 Mich App 319, 323 (1976) (particularly violent offense).

When a nolo contendere plea is offered to a specific intent offense because a criminal defendant was too intoxicated to remember the events surrounding the offense, the prosecution must offer evidence refuting the intoxication defense. Without any refutation, the specific intent element is without a sufficient factual basis. *People v Polk*, 123 Mich App 737, 740–41 (1983).

The ultimate test of whether a no-contest plea is appropriate is whether "the interest of the defendant and the proper administration of justice do not require interrogation of the defendant." *Guilty Plea Cases*, 395 Mich 96, 132–33 (1975). The court may also wish to consider the treatment implications of a no-contest plea. Effective treatment may depend upon the perpetrator's willingness to admit that he or she committed the offense. If the respondent is unwilling to make this admission in court, he or she may also be reluctant to make an admission in therapy.

10.7 Plea Agreements

If there is any plea agreement, the court must confirm the agreement on the record, and the court must ask the juvenile if any promises have been made beyond those in the agreement or whether anyone has threatened the juvenile. MCR 5.941(C)(2)(a)–(b).*

*See Section 17.4(B) for a discussion of this requirement in criminal cases.

The court cannot accept a plea from a juvenile in confession to a lesser-included offense without the concurrence of the prosecutor. *In re Wilson*, 113 Mich App 113, 120–21 (1982). See also *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672, 682–85 (1972), *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich 115, 119–22 (1974) (accepting plea over prosecutor’s objection violates separation of powers doctrine), and MCL 712A.11(1)–(2); MSA 27.3178(598.11)(1)–(2) (only prosecutor may submit petition alleging criminal offense).

10.8 Plea Withdrawal

The court may take a plea of admission or no contest under advisement. If this is done, the juvenile has the right to withdraw the plea offer up until the time that the court accepts the plea. In addition, the court has the discretion to allow the juvenile to withdraw the plea even after it has been accepted by the court. MCR 5.941(D).

10.9 Qualified Pleas

MCR 5.941(B) allows the court to accept a plea of admission or no contest conditioned upon the preservation of an issue for appellate review. *In re Bailey*, 137 Mich App 616, 621 (1984) (preservation of non-jurisdictional issue),* and *People v Mathews*, 197 Mich App 143 (1992) (nolo contendere plea may be qualified).

*See Section 17.17(A) – (C) for a discussion of preservation of issues for appeal in criminal cases.

10.10 Victim’s Right to Consult With Prosecuting Attorney Regarding a Plea Agreement

The Juvenile Crime Victim’s Rights Act provides that if the juvenile has not already entered a plea of admission or no contest to the original charge at the preliminary hearing, the prosecuting attorney must offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim’s views about the disposition of the offense, including the victim’s views about dismissal, waiver, and pretrial diversion programs, before finalizing any agreement to reduce the original charge. MCL 780.786(3); MSA 28.1287(786)(3).*

*See Section 7.19 (applicability of JCVRA).

10.11 Pleas After Transfer of Case From Criminal Division

*See Section 22.8(C) for a more detailed discussion of the bindover decision following preliminary examinations in “automatic” waiver cases.

*See Section 7.15 (detention considerations at preliminary hearings).

*See Chapters 24 (“traditional” waiver) and 16–21 (designated proceedings).

*See Section 2.14.

In “automatic” waiver cases, if at the conclusion of the preliminary examination of a juvenile the magistrate finds that a specified juvenile violation did not occur or that there is not probable cause to believe that the juvenile committed the violation, but that there is probable cause to believe that some other offense occurred and that the juvenile committed that other offense, the magistrate must transfer the case to the Family Division of the county where the offense is alleged to have been committed. MCL 766.14(2); MSA 28.932(2), MCR 6.911(B), and *People v Veling*, 443 Mich 23, 31–32 (1993).*

MCR 5.939 states that the Family Division must hear and dispose of a case transferred pursuant to MCL 766.14; MSA 28.932, in the same manner as if the case had commenced in the juvenile court. A petition that has been approved by the prosecuting attorney must be submitted to the court. The Family Division may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the requisite probable cause in MCR 5.935(D) to detain the juvenile.*

Following transfer from the Criminal Division, the Family Division may accept a plea of admission or no contest according to the rules prescribed in this chapter. Transfer of the case does not prevent the prosecutor from seeking “traditional” waiver of the court’s jurisdiction under MCR 5.950 (if the petition is authorized), or from designating the case under MCR 5.951(A)(3)(a). MCL 766.14(3); MSA 28.932(3).*

A delinquency case transferred from the Criminal Division to the Family Division of the county in which the offense occurred may be further transferred to the juvenile’s county of residence if “traditional” waiver is not pursued. See MCL 712A.2(d); MSA 27.3178(598.2)(d), and MCR 5.926(B).*